IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3500 OF 2004

Baburao Bhauso Mirajkar ..Petitioner.
Vs.
Shamrao Bhau Shirgure
(since deceased through his Lrs)

Balu Shamrao Shirgure & Ors. ..
Respondents.

....

Mr. A.A. Kumbhakoni with Mr. A.M. Kulkarni for the Petitioner.
Mr. A.A. Garge for Respondent Nos.1(2), 1(4), 1(6) and 4.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006.

P.C. :

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waives service. By consent taken up for hearing and final disposal.

2. A suit for specific performance was filed by the Petitioner on 11th June, 1991. The First Defendant expired on 6th March, 1993. On 8th April, 1993 an application at Exh.45 for bringing the heirs of the First Defendant on record was allowed. On 22nd September, 1993, the plaint was amended by bringing the heirs on the record and a copy of the plaint was supplied to the legal heirs. However,

since the process fee was inadvertently not paid, the suit was dismissed on 23rd January, 2000 against the legal representatives of the First Defendant. In the meantime, there was a change in advocates. On 12th September, 2002 an application was moved for setting aside the dismissal of the suit. Since that had not been accompanied by an application for condonation of delay, such an application was also moved on 12th February, 2004. Both the applications came to be dismissed by the Learned Trial Judge.

3. In my view, there is no reason why an inadvertent failure to pay the process fess should result in the denial of the entitlement of the Petitioner to pursue the suit on merits. The legal representatives of the First Defendant can be duly compensated by an order for the payment of costs. The explanation furnished by the Petitioner was, in my view, sufficient and should have been accepted. In the circumstances, the Petition is allowed setting aside the orders of the Trial Court dated 18th March, 2004. The delay in moving the application for setting aside the dismissal of the suit as against the First Defendant shall stand condoned and the applications at Exhibits 117 and 134 shall stand

allowed, subject to the payment of costs of Rs.5,000/- payable to

the legal representatives of the First Defendant, to be deposited in the Trial Court within two weeks which shall be a condition precedent.

4. It is however made clear that the present order shall not result in the revival ipso facto of the ad interim injunction which was granted by the Trial Court in the suit. It would be open to the Petitioner to move the Learned Trial Judge for the grant of an order of injunction pending the disposal of the suit. The Petition is disposed of.